

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: October 16, 2002
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.

Chairperson Gilbert S. Coloma-Agaran called the meeting of the Commission on Water Resource Management to order at 9:09 a.m.

The following were in attendance:

MEMBERS: Mr. Gilbert S. Coloma-Agaran, Dr. Bruce Anderson, Mr. Clayton Dela Cruz, Mr. Brian Nishida, Mr. Herbert Richards, Jr.

STAFF: Linnel Nishioka, Ed Sakoda, David Higa, Charley Ice, Kevin Gooding

EXCUSED: Ms. Meredith Ching

COUNSEL: Edsel Yamada

OTHERS: Laura Mau, Neil Hannahs, Robert Lindsey, Dr. Adam Asquith, Steve Anthony, Manabu Tagomori, Kapua Sproat, Marjorie Ziegler, Creighton Mattoon, Dana Arakaki

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties. The items were not taken in the order posted on the agenda.

1. Minutes of the September 18, 2002 meeting

MOTION: (DELA CRUZ/RICHARDS)
To approve the minutes.
UNANIMOUSLY APPROVED.

2. Old Business/Announcements by Deputy Director Linnel Nishioka

Commission staff Roy Hardy attended a Maui County Council committee meeting that is considering the issue of the designation of the Iao Aquifer. According to Commission staff findings, Iao meets certain criteria for designation. There have been no recommendations from the Commission staff whether it should or should not be designated. Because of erroneous media coverage, this is what Deputy Director asked Mr. Hardy to clarify to the Council committee.

7. Application for a Stream Channel Alteration Permit (SCAP-MA-344), Department of Public Works and Waste Management, County of Maui, Replace Kaholopo'o Highway Bridge, Haneoo Stream, Hana, Maui, TMK: (2) 1-4-007:004

PRESENTATION OF SUBMITTAL: Edwin Sakoda

RECOMMENDATIONS:

That the Commission approves a stream channel alteration permit for the replacement of Kaholopo'o Bridge at Haneo'o Stream, Hana, Maui (TMK: 1-4-07:004). The permit will be valid for two (2) years subject to our standard permit conditions in Exhibit 4 and the following special condition:

“The applicant shall obtain written concurrence from the State Historic Preservation Division indicating the applicant has a detailed mitigation plan and hired a qualified archaeologist to monitor the construction work. A copy of this written concurrence shall be submitted to the Commission prior to construction activities.”

TESTIMONY BY APPLICANT:

Ms. Laura Mau of Wilson Okamoto & Associates, on behalf of the applicant was present to answer questions. She also reported that they have contracted with Cultural Surveys Hawaii for an archaeological monitoring plan.

MOTION: (RICHARDS/DELA CRUZ)

To approve the submittal.

UNANIMOUSLY APPROVED.

3. Request to Enter Into an Agreement for Professional Services, For the Update and Completion of the Hawaii Drought Plan, Phase1

PRESENTATION OF SUBMITTAL: Linnel Nishioka

RECOMMENDATIONS:

Staff recommends that the Commission authorize the Chairperson to enter into an agreement for professional services to refine and update the Hawaii Drought Plan, Phase 1. Subject to Governor's approval, final consultant selection and contract execution will be done in accordance with Chapter 103D, Hawaii Revised Statutes and Chapter 3-122, Hawaii Administrative Rules.

MOTION: (RICHARDS/NISHIDA)

To approve the submittal.

UNANIMOUSLY APPROVED.

4. Kamehameha Schools Alternative Settlement Proposal, Complaint C98-08 and Earthjustice Legal Defense Fund Petition for Declaratory Order on Lalakea Stream, Lalakea Ditch, Kukuihaele, Hawaii (TMK: 4-8-03:06)

PRESENTATION OF SUBMITTAL: Edwin Sakoda

AMENDED RECOMMENDATIONS:

That the Commission approve the studies at sites at Waipio/Hamakua, Punaluu (Oahu), and Waipa (Kauai). And that the Commission authorize the Commission staff to continue to work with KS on the three stream studies and to advise KS in developing final proposals for each study, including input from the communities adjacent to the respective streams. The “detailed cost estimates” given above by KS shall be used as a guideline but may be adjusted if justified by KS when the detailed proposals are presented to the Commission at the end of December 2002.

That the Commission approve the request to complete the studies in three phases as follows:

Phase 1: Completion of study parameters, taking into account Commission staff and community input, and presentation of detailed study proposals with cost estimates that may be adjusted based on discussions with staff.~~—and compliance deadlines. The study parameters be brought back to the Commission by the December Commission meeting. 31, 2002. Upon a showing a good cause and sufficient progress, the staff may extend the December 31, 2002 deadline for a time period not to exceed 3 additional months without further Commission approval. The priority of the studies are 1) Waipio, 2) Waipa, and 3) Punaluu.~~

Phase 2: Completion of studies.

Phase 3: Reporting of findings and activities, and determination by the Commission of dollar amounts credited toward satisfaction of penalty provisions.

Commissioner Anderson commented that he feels it inappropriate to do redundant studies. To repeat the studies in the Waipio area would be a waste of resources.

TESTIMONY BY APPLICANT:

Mr. Neil Hannahs of Kamehameha Schools (KS), introduced Dr. Adam Asquith of Waipa, Bob Lindsey, Director of Hawaii Island Operations, Steve Anthony, USGS, Manabu Tagomori, Creighton Mattoon, Ulalia Woodside, Kapua Sproat, and Marjorie Ziegler, who are working on the alternative settlement proposals with KS. Mr. Hannahs stated that the goal of all these studies in the three areas is to produce meaningful scientific data that will help us manage our streams better and improve the environment. Working on the proposal in this way allows KS to work with the communities in a partnership resulting in educational benefits. KS has committed to use \$475,000 for these studies.

Dr. Adam Asquith stated that the Waipa Ahupuaa has smaller tributaries than the Lalakea Ditch System. The methodology is scientifically proven. The issues regarding traditional uses of the water, improvement of land management and riparian areas along the stream, and impact of native stream fauna are great concerns on Kauai and the Waipa community. It directly addresses the issues of Lalakea with regard to impact of stream diversion and stream restoration. Maintaining the integrity of native biota of the stream is a main concern. The community would be able to use the results of the studies.

Commissioner Richards appreciated the fact that the various communities and government are working together but that this issue is taking too long. He stated that he was not comfortable about extending any deadlines beyond December 2002. He reminded KS that technically the \$453,000 actually belongs to the Water Commission and that the proposal must be done in a timely manner. He felt strongly about finalizing the proposal by the end of the year.

Mr. Hannahs replied by saying that KS would also like to resolve this matter. He stated that the studies cannot be done by December and may be difficult to obtain an agreement with the communities.

Chair Coloma-Agaran stated that the Commission is not requiring that KS obtain total community agreement for the studies, which would be difficult, but to seek community input into the design of the studies.

In answer to Commissioner Anderson's question on the studies that are being proposed for Punaluu by way of stream changes that would contribute to the study, Mr. Steve Anthony of U.S. Geological Survey stated that the proposal is to collect baseline information on streamflow where water is coming and going as well as an inventory of native and alien fish species. There are many activities in the watershed that are affecting streamflow as well as the native aquatic communities. The Punaluu communities have concern about the lack of information needed by the Water Commission to establish instream flow standards. In this partnership that USGS formed with KS, Water Supply, and the community, a number of questions and information have been collected to address instream flow standards.

Commissioner Anderson was concerned about diluting the studies to the point that we are trying to look at too much with too little at the risk of not getting the information that is really needed to make decisions. One of the basic problems is that Commissioner Anderson would like to see more objective information on the advantages or disadvantages of stream restoration. As KS plans the studies, he stated that they should make sure that they don't short change work that is being done in that area, trying to get more information that may or may not help answer the questions that are immediately before them. Lastly, Commissioner Anderson stated that it would be desirable to obtain the information from Punaluu but if it compromises the collection of information in the other two areas where some actions have been planned, then it is not appropriate to include Punaluu.

Ms. Marjorie Ziegler on behalf of the Waipio Valley Community Association (WVCA) spoke about why the Commission should also consider Punaluu Stream an important site to be included in the KS proposal. The Punaluu community has reasons to petition the Commission to amend the interim instream flow standards for Punaluu Valley. She stated that the Commission has not done anything to the first petition that was filed about 7 years ago.

Ms. Ziegler stated that WVCA also supports the Waipa proposal, but have some concerns about the Waipio proposal. Since 1989 the three streams have been diverted and unused except for 2 emergency situations where the lower ditch was being repaired and water was needed. Lalakea water has not been used; it is wasted water and is being dumped. The fish counts are not the best use of the resource; it is probably not the most important information needed in Waipio. Water use studies and assessments are probably the highest needs in the valley. If more fish counts are intended for the Hiilawe system, WVCA recommends that the methods that the consultants use and their findings be peer-reviewed by the U.S. Fish and Wildlife Service, Division of Aquatic Resources, Sea Grant, Dr. Asquith, and the USGS.

Mr. Creighton Mattoon, Vice president of the Punaluu Community Association (PCA), stated that the petition that was filed in 1994 is still continuing. The reason why the petition was filed was because of stream diversions and alterations that occurred. KS's intentions of working with various communities prompted PCA to be proactive and try to form a partnership.

Commissioner Anderson stated that the three studies are commendable. A policy that he would like staff and KS adhere to is that the penalty go toward supporting the information needs of the community which was impacted, which is the Hamakua and Waipio area. If it is not necessary to do further work in that area, then to do other studies are fine. The study parameters have been outlined and the penalty amount has been set. Commissioner Anderson suggested that staff look at the issue that it is important to do the studies well and not compromise any of the studies. The first priority, in his view, is to make sure the Waipio study is completed; Waipa is the second priority; and Punaluu last only if funds are available.

Commissioner Anderson made a motion that the studies and concept be approved with the understanding that the budget may need to be adjusted based on final discussions with staff to assure that the studies are thorough and adequate to address issues pertinent to those areas. Priorities are 1) Waipio, 2) Waipa and 3) Punaluu. If funds become unavailable, then Punaluu studies are eliminated. He suggested modifying the second recommendation that 3 additional months be taken out. An additional recommendation is that KS present a final study plan for approval by the Commission at the December meeting.

Chair Coloma-Agaran summarized the amended motion:

Approval of the concept of the three proposed studies with the understanding that cost estimates may be adjusted based on discussions with staff. The studies be in priority of 1) Waipio, 2) Waipa and 3) Punaluu.

The study parameters be brought back to the Commission at its December 2002 meeting.

MOTION: (ANDERSON/NISHIDA)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

9. Application for a Stream Channel Alteration Permit (SCAP-HA-347), Seismic Retrofit and Access Roads, Kolekole Bridge, Kolekole Stream, Hawaii, TMK(s): 2-8-15:01, 2-9-03:44 C-3, 2-9-03:44

PRESENTATION OF SUBMITTAL: Edwin Sakoda

RECOMMENDATIONS:

That the Commission approve a stream channel alteration permit (SCAP-HA-347) to the Department of Transportation for seismic retrofitting of Kolekole Bridge, Hamakua, Hawaii (TMK: 2-8-15:01, 2-9-03:44 C-3, 2-9-03:44). The permit shall be valid for two (2) years, subject to our Standard Stream Channel Alteration Permit Conditions in Exhibit 5 and the following special condition:

“The applicant shall prepare and implement a BMPP to minimize water pollution. The BMPP shall be acceptable to the DOH, Clean Water Branch. Prior to construction activities, the applicant shall submit documentation to the Commission indicating the DOH, Clean Water Branch reviewed and accepts the BMPP.”

TESTIMONY BY APPLICANT:

Ms. Dana Arakaki of Engineering Concepts is the agent for the Dept. of Transportation. She added that the lead paint removal was covered under another contract that has been completed. At the time that the permit application and environmental assessment was started, the lead paint removal was done at the same time. There has been some delay in awarding the design contract.

MOTION: (RICHARDS/DELA CRUZ)

To approve the submittal.

UNANIMOUSLY APPROVED.

5. **Jeffree Trudeau for Gwendolyn Grace, Wailani Drilling, Inc., AFTER-THE-FACT VARIANCE FROM WELL CONSTRUCTION STANDARDS, WAIVER OF SURVEY REQUIREMENT AS UNDUE HARDSHIP, Hoalua-Grace Well (Well No. 5413-11), Well Construction: 4-inch Casing Diameter, 490-feet Deep Well, Pump Installation: 15 gpm for Domestic and Irrigation use, TMK 2-9-7:37, Hanehoi Point, Hoalua Bay, Maui**

PRESENTATION OF SUBMITTAL: Charley Ice

AMENDED RECOMMENDATIONS:

That the Commission:

- A. Find Wailani Drilling Company in violation of §174C-86 HRS, not complying fully with the Hawaii Well Construction and Pump Installation Standards (HWCPIS), having installed a ¾-inch diameter monitor tube rather than the standard 1¼-inch diameter tube in the Hoalua-Grace Well (Well No. 5413-11).
- B. Assess a total fine of ~~\$500~~ \$250 for the violation in "A".
- C. Approve a variance from the HWCPIS, to allow the installation of a ¾-inch diameter monitor tube in lieu of the standard 1¼-inch diameter tube in the Hoalua-Grace Well (Well No. 5413-11). Water level reporting requirements remain intact.
- D. Approve a variance from the survey requirement for the Hoalua-Grace Well, because it would be an onerous burden on the permittee. Rather, the wellhead shall have a clearly and permanently marked benchmark for making all water level measurements in the well. The benchmark elevation can be surveyed at some future date.

MOTION: (RICHARDS/ANDERSON)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

6. **Maliko Trading Company, LLC, Request for Variance of Pump Test Standards, Maliko-Moretti #1 (Well No. 5620-05), Well Construction: 6-inch Casing Diameter, 225 ft. Deep Well, Pump Installation: 135 gpm for domestic use, TMK 2-7-4:6, Lower Ha'iku, above Maliko Gulch, Maui**

PRESENTATION OF SUBMITTAL: Charley Ice

RECOMMENDATIONS:

That the Commission:

- A. Approve the modification of the Well Construction Permit for the Maliko-Moretti Well #1 (Well No. 5620-05), with a special condition allowing the installation of the permanent pump for the purposes of pump testing only. All conditions of the original permit remain in force. Similar to the variance situation, the following sequence is prescribed:
1. Following completion of well construction, the permittee shall notify staff one week prior to pump tests.
 2. The pump tests shall be started within one week of the installation of the pumps. Otherwise, the pumps shall be removed.
 3. The step-drawdown test shall be conducted first and the well allowed to rest one full day or until full water-level recovery occurs before starting the constant-rate test.
 4. The applicant shall submit pump test results within one day of the completion of the pump tests on forms provided by the Commission.
 5. Staff will complete its analysis of pump results and respond with approval or further advice within one business day; pump installation permit shall be issued following approval upon receipt of full well completion report part 1.
 6. In the event that pump tests or pump size are not satisfactory to Commission staff, the applicant shall rerun the pump tests in accordance with “1” through “5” above until installed pumps are in compliance with permit requirements.
- B. Authorize the Chairperson to approve and issue a pump installation permit supported by information provided from aquifer pumping test results, required in Well Construction Standard Condition 6e (Exhibit 3), subject to the Standard Pump Installation Conditions in Exhibit 4.

Commissioner Anderson suggested to streamline and save time, variance issues could be delegated at the staff level. If this is possible the variance should be clear and concise with no gray areas.

Deputy Director Nishioka said that she would need to check if this can be done administratively.

MOTION: (DELA CRUZ/RICHARDS)

To approve the submittal.

UNANIMOUSLY APPROVED.

8. Application for a Stream Channel Alteration Permit (SCAP-OA-345), Nuuanu Stream, Honolulu, Oahu, TMK: 1-7-06

PRESENTATION OF SUBMITTAL: Edwin Sakoda

RECOMMENDATIONS:

That the Commission approve a stream channel alteration permit for a pipeline crossing on Nuuanu Stream (TMK: 1-7-006). The permit will be valid for two (2) years, subject to our standard permit conditions in Exhibit 5.

MOTION: (RICHARDS/DELA CRUZ)

To approve the submittal.

UNANIMOUSLY APPROVED.

Chair Coloma-Agaran entertained a motion to move into Executive Session.

MOTION: (RICHARDS/DELA CRUZ)

UNANIMOUSLY APPROVED.

This meeting was adjourned at 11:09 am.

Respectfully submitted,

FAITH F. CHING
Secretary

APPROVED AS SUBMITTED:

LINNEL T. NISHIOKA
Deputy Director